National Medical Hospital of Compton, d/b/a Dominguez Valley Hospital *and* Hospital and Service Employees Union, Local 399, Service Employees International Union, AFL-CIO. Case 21-CA-19605

August 7, 1981

DECISION AND ORDER

Upon a charge filed on October 2, 1980, by Hospital and Service Employees Union, Local 399, Service Employees International Union, AFL-CIO, herein called the Union, and duly served on National Medical Hospital of Compton, d/b/a Dominguez Valley Hospital, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 21, issued a complaint on November 10, 1980, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and the complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on August 27, 1980, following a Board election in Cases 21-RC-15976 and 21-RC-15969, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;[1] and that, commencing on or about September 16, 1980, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On November 20, 1980, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On February 12, 1981, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on February 17, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted.

Upon the entire record in this proceeding, the Board makes the following:

[1] Official notice is taken of the record in the representation proceeding, Cases 21-RC-15976 and 21-RC-15969, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); *Intertype Co.* v. *Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

Ruling on the Motion for Summary Judgment

In its answer to the complaint and response to the Notice To Show Cause, Respondent admits the jurisdictional allegation of the complaint. It also admits that an election was held in an appropriate unit and that the Union received a majority of the votes cast. Respondent denies, however, that the Union's Certification of Representative is valid based on its objections to the election.

In its Motion To Transfer Case to Board and for Summary Judgment, counsel for the General Counsel alleges that Respondent seeks to relitigate issues previously considered in the underlying representation cases, and that there are no issues of fact warranting a hearing. We agree.

Review of the record, including the representation proceeding in Cases 21-RC-15969 and 21-RC-15976, reveals that the Union sought an election in a unit of all employees of the Employer; excluding professional employees, registered nurses, confidential employees, guards and supervisors as defined in the Act. International Union of Operating Engineers Local 501, AFL-CIO, sought an election in a unit of all engineering and maintenance department employees only.

Although the Regional Director found that an overall unit of employees, including engineering and maintenance employees constituted an appropriate unit, he also found that the engineering and maintenance department employees could also constitute an appropriate unit. He therefore directed an election in the overall unit sought by the Union (voting group A) and an election in a unit consisting only of engineering and maintenance department employees (voting group B) as sought by Local 501. Local 501 chose not to participate in the election in voting group A. The elections in both units were conducted on August 31, 1979.

Neither labor organization received a majority of the votes cast in voting group B. When the ballots of both voting groups were pooled, the tally of those ballots revealed that of the 273 ballots cast, 150 were for the Union, 106 were against, 2 were void, and 17 were challenged.

On September 5 and 10, 1979, Local 501 and Respondent, respectively, filed objections to conduct affecting the results of the election. On December 31, 1979, the Acting Regional Director issued a Supplemental Decision, Order, and Direction of Second Election, in Case 21-RC-15969 and a Certification of Results of Election in Case 21-RC-15976.

Thereafter, in January 1980, both Respondent and the Union filed requests for review of the Re-

gional Director's Decision. On February 8, 1980, the Board granted the Union's request for review but denied Respondent's request for review.

On August 27, 1980, the Board issued its Decision on Review and Certification of Representative.[2] In that Decision the Board found that the Union did not engage in any misrepresentation of a material fact which would warrant setting the election aside. It also found that the inadvertent and minimal deviation of one incorrect announcement made over the Employer's public address system, weighed against the entire case, was an insufficient basis for setting the election aside. Accordingly, the Board overruled Respondent's objections and certified the Union as the exclusive bargaining representative.

In this proceeding, Respondent contends that the Board erred in its Decision on Review and Certification of Representative and that the Union was improperly certified. The General Counsel contends that Respondent is improperly seeking to litigate issues that were raised and decided in the representation case. We agree with the General Counsel.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.[3]

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is a Nevada corporation engaged in the business of operating an acute care hospital in Compton, California. During the past 12-month period, Respondent had gross receipts in excess of $250,000 and purchased and received goods valued in excess of $5,000, which goods originated outside the State of California.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Hospital and Service Employees Union, Local 399, Service Employees International Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All employees of the Employer, including all engineering and maintenance department employees, employed at its facility located at 3100 South Susana Road, Compton, California; excluding professional employees, confidential employees, guards and supervisors as defined in the Act.

2. The certification

On August 21, 1980, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 21, designated the Union as their representative for the purpose of collective bargaining with Respondent. The Union was certified as the collective-bargaining representative of the employees in said unit on August 27, 1980, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about September 3, 1980, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about September 16, 1980, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive repre-

[2] 251 NLRB 842.

[3] See *Pittsburgh Plate Glass Co.* v. *N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

sentative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since September 16, 1980, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. National Medical Hospital of Compton, d/b/a Dominguez Valley Hospital, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Hospital and Service Employees Union, Local 399, Service Employees International Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All employees of the Employer, including all engineering and maintenance department employees, employed at its facility located at 3100 South Susana Road, Compton, California; excluding professional employees, confidential employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since August 27, 1980, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about September 16, 1980, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, National Medical Hospital of Compton, d/b/a Dominguez Valley Hospital, Compton, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Hospital and Service Employees Union, Local 399, Service Employees International Union, AFL-CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All employees of the Employer, including all engineering and maintenance department employees, employed at its facility located at 3100 South Susana Road, Compton, California;

excluding professional employees, confidential employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its place of business in Compton, California, copies of the attached notice marked "Appendix."[4] Copies of said notice, on forms provided by the Regional Director for Region 21, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 21, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

[4] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Hospital and Service Employees Union, Local 399, Service Employees International Union, AFL-CIO, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All employees of the Employer, including all engineering and maintenance department employees, employed at its facility located at 3100 South Susana Road, Compton, California; excluding professional employeees, confidential employees, guards and supervisors as defined in the Act.

NATIONAL MEDICAL HOSPITAL OF COMPTION, D/B/A DOMINGUEZ VALLEY HOSPITAL